

## HONG KONG TOURISM BOARD

### General Terms and Conditions for Goods and Services

#### 1. Interpretation

The following definitions and rules of interpretation shall apply in the Terms and Conditions:

##### Definition

“ <b>Business Day</b> ”	means a day other than a Saturday, Sunday or public holiday in Hong Kong.
“ <b>Contract</b> ”	means a legally binding document formed between HKTB and the Supplier for the supply of Goods / Services which consists of the Terms and Conditions and provisions relating to the scope and supply of the Goods / Services that are contained in the Tender Invitation and the Tender Submission.
“ <b>Delivery Date</b> ”	means the date or dates for the delivery of any of the Goods/ Services as specified in the Contract, the Tender Invitation and/or the Tender Submission, as the case maybe.
“ <b>Deliverables</b> ”	<b>[Applicable to the supply of Services]</b> means the Services and all documents, products, reviews, reports, findings, and materials compiled, developed, prepared, authored by the Supplier or its agents, contractors and/or employees as part of or in relation to any of the Services in any form or media, including but not limited to drafts or finalised versions of any drawings, maps, plans, diagrams, designs, pictures, computer programmes, data, specifications and reports. <b>[Applicable to the supply of Goods]</b> means any of the Goods as specified in the Contract, the Tender Invitation and/or the Tender Submission, as the case maybe.
“ <b>Delivery Location</b> ”	means the address or addresses for the delivery of any of the Goods / Services as specified in the Contract, the Tender Invitation and/or the Tender Submission, or as confirmed by HKTB, as the case maybe.
“ <b>Force Majeure Event</b> ”	means any acts of god, war, insurrection, riot, civil or social unrest, sabotage, boycott, embargo, explosion, fire, earthquake, flood, unavoidable accident, the outbreak of any disease, virus epidemic, riot, public disorder, violent demonstrations, blockade, government regulations, legal proceedings.
“ <b>Goods</b> ”	means the goods that are requested or to be acquired by HKTB from the Supplier, including, without limitation, the provision of the Deliverables, details of which are set out in the Contract, Tender Invitation, and the Tender Submission.
“ <b>HKTB</b> ”	means Hong Kong Tourism Board.

<b>“Intellectual Property Rights”</b>	means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of confidential information (including but not limited to know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>“Services”</b>	means the services that the Supplier has been engaged by HKTB to provide including, without limitation, the provision of the Deliverables, as more particularly described in the Contract, Tender Invitation and/or the Tender Submission, as applicable.
<b>“Supplier”</b>	means the company, entity or individual who is engaged by HKTB to supply the Goods / Services.
<b>“Tender Invitation”</b>	means the request for quotation or the request for proposal, as the case maybe, that has been issued by HKTB to invite tender submissions from third parties (including the Supplier) for the provision of the Goods / Services.
<b>“Tender Submission”</b>	means the quotation or proposal, as the case maybe, that is submitted by the Supplier to HKTB in response to the Tender Invitation.
<b>“Terms and Conditions”</b>	means the General Terms and Conditions for Goods and Services of Hong Kong Tourism Board.
HKTB and the Supplier shall, where the context permits, individually be referred to as a <b>“Party”</b> and collectively as the <b>“Parties”</b> .	

## 2. Legally Binding Contract

- 2.1 The Supplier hereby acknowledges and accepts that, notwithstanding whether a Contract is issued by HKTB, it is legally bound by the Terms and Conditions once it has been selected by HKTB as the Supplier pursuant to the selection procedure of the Tender Invitation.
- 2.2 HKTB shall not be bound by and the Supplier hereby expressly excludes any other terms and conditions stipulated in the Tender Submission or any of the Supplier’s forms and documents.

## 3. Warranties and Acceptance

[Clauses 3.1 to 3.2 are applicable to the supply of Services]

- 3.1 The Supplier warrants that the Services to be rendered to HKTB shall:

- 3.1.1 correspond with the applicable scope of work, specification(s) and/or requirements that have been designated by HKTB;
  - 3.1.2 be performed, provided and carried out in a timely, diligent, competent and professional manner and all Deliverables shall be completed by the relevant Delivery Date with all reasonable skill and care by employees, officers, agents and contractors who have the necessary qualifications, ability, experience, skills, expertise and capacity; and
  - 3.1.3 be in compliance with all applicable statutory and regulatory requirements.
- 3.2 The warranties in Clause 3.1 above shall apply for the entire period during which the Supplier's appointment by HKTB as the provider of the Services remains in place or as otherwise agreed between the Supplier and HKTB in writing.

[Clauses 3.3 to 3.8 are applicable to the supply of Goods]

- 3.3 The Supplier warrants that, for a period of eighteen (18) months from the date of acceptance or as otherwise agreed between the Supplier and HKTB, the Goods to be rendered to HKTB shall:
- 3.3.1 correspond with the applicable specification(s), drawing(s), description(s) or sample(s) provided to HKTB;
  - 3.3.2 be new;
  - 3.3.3 be completely free from defects in design, material and workmanship;
  - 3.3.4 be of merchantable quality and fit for their intended purpose made known to the Supplier by HKTB, whether expressly or by implication, and/or as set out in the Tender Invitation, and which the Supplier acknowledges and accepts that HKTB relies solely on the Supplier's expertise, experience and judgment to ensure that the Goods achieve are of merchantable quality and fit for their intended purpose; and
  - 3.3.5 be in compliance with all applicable statutory and regulatory requirements.
- 3.4 All Goods ordered are subject to final inspection, testing, and acceptance by HKTB which shall be without prejudice to any other rights and remedies available to HKTB:
- 3.4.1 if any Goods do not correspond with the requirements in Clause 3.4, HKTB reserves the right to reject the Goods or to require the Supplier to, at the Supplier's own cost, take immediate remedial actions;
  - 3.4.2 HKTB may conduct further inspection and testing after the Supplier has carried out the relevant remedial actions;
  - 3.4.3 if the rejected Goods have been paid for, HKTB shall have the right to return the rejected Goods and the Supplier shall, without delay, without any off-

set or deductions (including without limitation for any administrative fees and/or expenses), refund the paid amount to HKTB;

- 3.4.4 the Supplier shall cover all costs incurred in case of rejected Goods, including but not limited to all inspection, handling and transportation expenses; and
- 3.4.5 the Supplier shall remain fully responsible for the Goods until HKTB has accepted the Goods and that any inspection or testing that are conducted by HKTB for the purpose of determining whether the Goods are acceptable shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.5 The Supplier shall ensure that, throughout the term of the Contract, it has and maintains all relevant licences, permissions, authorisations, consents and permits that it requires in order to fully carry out its obligations under this Contract.
- 3.6 The Supplier shall ensure that the Goods are properly packed and secured during shipment and delivery so as to ensure that the Goods are not damaged when they reach the Delivery Location.
- 3.7 Where a Delivery Date is specified for the delivery of any of the Goods, time shall be of the essence and the Supplier undertakes to HKTB that the relevant Goods shall be delivered to HKTB:
  - 3.7.1 on the Delivery Date or according to the schedule specified;
  - 3.7.2 to the Delivery Location; and
  - 3.7.3 during HKTB's normal business hours, or as otherwise instructed in writing by HKTB.
- 3.8 The Supplier shall ensure that quantity of each shipment of the Goods that are delivered to HKTB correspond to the quantity in accordance with the Contract and as stated in the relevant packing list, bill of lading, airway bill and/or any other documentation, as applicable, that have been issued by the Supplier to HKTB for the customs clearance.
- 3.9 The Supplier shall provide the Deliverables on the relevant Delivery Date(s). Any provision of Goods/ Services and/or Deliverables by the Supplier shall be subject to acceptance by HKTB before the relevant Goods/ Services and/or Deliverables in question are regarded as having been completed and delivered.

#### **4. Title and Risk**

[Clauses 4.1 and 4.2 are applicable to the supply of Goods]

- 4.1 Risk of loss or damage to the Goods shall remain with Supplier until HKTB has expressly given its acceptance of the Goods. Where applicable, HKTB shall determine whether to accept the Goods by conducting acceptance testing of the

Goods in accordance with the acceptance testing procedures and criteria as specified in the Contract and/or Tender Invitation and acceptance of the Goods shall be determined by the outcome such testing procedures and criteria and evidenced by a letter of acceptance from HKTB or as otherwise accepted by HKTB in any other format as it deems fit.

- 4.2 Title in the Goods shall pass from the Supplier to HKTB upon express written acceptance of the Goods by HKTB in accordance with Clause 4.1 without prejudice to any rights to reject, claim damages and/or any other remedies available to HKTB after such express acceptance.

## 5. Price and Payment

- 5.1 Unless otherwise specified in the Contract, Tender Invitation and/or the Tender Submission, the price(s) submitted by the Supplier for the Goods / Services includes all charges and expenses directly and indirectly incurred by the Supplier in respect of
- (i) [for the supply of Services] the performance of the Services.
  - (ii) [for the supply of Goods] the supply of the Goods, including, without limitation, any import fees and/or duties, the cost of packaging, shipping, insuring and for the delivery of the Goods.

Until such Deliverables have been delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purposes not connected with the Contract.

- 5.2 No extra charges by the Supplier or its agents shall be effective unless agreed in writing with HKTB.
- 5.3 The Supplier shall, without delay, render to HKTB invoices and such other documentation as HKTB may reasonably require. For the supply of Goods, the Supplier shall provide documentation, including but not limited to any bills of lading, airway bills, custom forms, export licenses and permits, country of origin statements, packing lists, delivery receipts and such other documentation, as appropriate.
- 5.4 Unless otherwise specified in the Contract, Tender Invitation and/or the Tender Submission, HKTB shall settle payment to the Supplier in Hong Kong Dollars in the following manner:
- (i) [for the supply of Services] within thirty (30) days after the relevant invoice date. The Supplier shall not issue any invoice in respect of any Services unless and until HKTB has confirmed acceptance of the Service and Deliverables in accordance to Clause 3.3.
  - (ii) [for the supply of Goods] within thirty (30) days after the relevant invoice date provided that the Goods and Deliverables have been accepted by HKTB in accordance with Clause 4. The Supplier shall not issue any invoice in

respect of any Goods unless and until HKTB has confirmed acceptance of the relevant Goods.

- 5.5 If HKTB fails to fulfill its payment obligation in a timely fashion, it must be given notice of default and granted a reasonable term by the Supplier to fulfill its payment obligation before HKTB can be deemed by the Supplier to be in default.
- 5.6 Without prejudice to any other rights of HKTB, it shall be entitled to suspend or withhold payment if the Goods / Services rendered by the Supplier are unsatisfactory to HKTB.
- 5.7 HKTB may, in its sole discretion and at any time, set off any liability of HKTB to the Supplier, whether such liability is actual or contingent, liquidated or unliquidated, and whether or not such liability arises from the provision of the Goods / Services. Any exercise by HKTB of its rights under this Clause 4 shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## 6. Remedies

[Clauses 6.1 to 6.5 are applicable to the supply of Services]

- 6.1 If the Supplier fails to perform the Services in accordance with the Terms and Conditions, the relevant provisions in the Contract, Tender Invitation and/or the Tender Submission (including, without limitation, any relevant deadlines or timetable), HKTB shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
  - 6.1.1 terminate the Contract with immediate effect by giving written notice to the Supplier without liability;
  - 6.1.2 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
  - 6.1.3 recover from the Supplier any costs incurred by HKTB in obtaining substitute services from a third party;
  - 6.1.4 require a refund from the Supplier of sums paid in advance for the Services that the Supplier has not provided; and/or
  - 6.1.5 claim damages for any additional costs, loss or expenses incurred by HKTB which are in any way attributable to the Supplier's failure to perform the Services in accordance with the Terms and Conditions, the relevant provisions in the Contract, Tender Invitation and/or the Tender Submission.
- 6.2 Time shall be of the essence for the Supplier to deliver the Services. If the Services are not duly performed by any relevant deadlines or timetable as specified under the Contract, Tender Invitation and/or the Tender Submission, HKTB may, at its sole discretion, claim or deduct one percent (1%) of the total Contract price for the Services for each day of delay that is incurred by the Supplier in performing the

relevant Services by way of liquidated damages, up to a maximum of fifty percent (50%) of the total Contract price for the Services.

- 6.3 If the Supplier is in breach of any of the warranties given under Clauses 3.1 to 3.3, then, without limiting or affecting its other rights or remedies, HKTB shall have one or more of the following rights:
- 6.3.1 terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 6.3.2 require the Supplier to rectify any part of the Services to which the breach(s) relate;
  - 6.3.3 demand a full refund from the Supplier of any portion of the Contract price that has been paid to the Supplier;
  - 6.3.4 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
  - 6.3.5 recover from the Supplier any expenditure incurred by HKTB in obtaining substitute services or deliverables from any other third party(ies); and/or
  - 6.3.6 demand that Supplier indemnifies HKTB for any additional costs, loss and/or expenses incurred by HKTB as a consequence of the Supplier's failure to comply with any of the warranties given under Clauses 3.1 to 3.3.
- 6.4 The Terms and Conditions shall extend to any substitute or remedial services provided by the Supplier.
- 6.5 HKTB's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and/or common law.

[Clauses 6.6 to 6.8 are applicable to the supply of Goods]

- 6.6 If the Goods are not delivered on the relevant Delivery Date, or do not comply with the warranties under Clause 3.4 or as otherwise agreed in the Contract, then, without limiting any of its other rights or remedies, and whether or not it has expressly accepted the Goods, HKTB may exercise any one or more of the following remedies:
- 6.6.1 terminate the Contract with immediate effect by giving written notice to the Supplier without liability;
  - 6.6.2 reject the Goods (in whole or in part) by giving notice in writing to the Supplier before or after delivery and return the rejected Goods to the Supplier at the Supplier's own risk and expense;
  - 6.6.3 require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

- 6.6.4 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - 6.6.5 recover from the Supplier any costs incurred by HKTB in obtaining substitute goods from a third party; and/or
  - 6.6.6 claim damages for any additional costs, loss or expenses incurred by HKTB which are in any way attributable to the Supplier's failure to perform and fulfil its obligations under the Contract.
- 6.7 The Terms and Conditions shall extend to any substitute or remedial goods provided by the Supplier.
- 6.8 HKTB's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and/or common law.
- 6.9 This Clause 6 shall survive termination and expiry of the Contract.

## **7. Indemnity**

[Clauses 7.1 and 7.2 are applicable to the supply of Services]

- 7.1 The Supplier shall indemnify HKTB against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation) and all interest, penalties and legal costs and all other professional costs and expenses suffered or incurred by HKTB arising out of, as a result of or in connection with:
- 7.1.1 any claim brought against HKTB for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with, the receipt, use or supply of the Services and/or the Deliverables provided by the Supplier; and
  - 7.1.2 any claim made against HKTB by a third party arising out of or in connection with the Services and/or the Deliverables provided by the Supplier, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 7.2 This Clause 7 shall survive termination and expiry of the Contract.

## **8. Termination**

- 8.1 Without prejudice to any of its other rights or remedies, HKTB may terminate the Contract with immediate effect by giving the Supplier written notice if:
- 8.1.1 there is a change of control of the Supplier; or



- 8.1.2 the Supplier's financial position deteriorates to such an extent that in HKTB's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 8.1.3 the Supplier commits a material breach of any of the Terms and Conditions or any conditions of the Contract and such breach is irremediable or if such breach is remediable but the Supplier fails to remedy that breach within a reasonable period of time in HKTB's opinion; or
- 8.1.4 the Supplier shall have a receiver or an administrative receiver appointed or shall pass a resolution for winding-up (other than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the Supplier shall become subject to an administrative order or shall enter into any voluntary arrangement with its creditors or suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

For the purpose of this Clause 8, the term "control" (including the correlative terms "controlling", "controlled by", and "under common control with") shall mean possession directly or indirectly, through one (1) or more intermediaries, of the power to direct or cause the direction of management and policies of a person, whether through ownership of voting securities or other equity interests, or by shareholders' agreement or otherwise.

## 9. Consequences of Termination

- 9.1 On termination of the Contract for any reason, the Supplier shall immediately deliver to HKTB:
  - (i) [for the supplier of Services]: all Deliverables whether or not then complete.
  - (ii) [for the supplier of Goods]: all Deliverables, including, without limitation, all materials, information, operating manuals, guides, specifications and any other information relating to Goods that have already been delivered and accepted by HKTB to HKTB.
- 9.2 Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of both the Supplier and HKTB that have accrued up to the date of termination or expiry.
- 9.3 Any provision of the Contract that expressly or by implication is intended to come into or continue to be in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 10. Insurance

- 10.1 During the term of the Contract, the Supplier shall maintain, at its own cost and with a reputable insurance company, valid insurance(s) including but not limited to professional indemnity insurance, public liability insurance, and/or contractors' all

risks insurance, as the case may be, covering an insured sum that is adequate to cover liabilities that may arise under or in connection with the Contract. On HKTB's request, the Supplier shall produce a copy of the certificate of insurance showing the insured sum and the insurance coverage.

## **11. Intellectual Property Rights**

- 11.1 The Supplier guarantees that the Goods / Services provided hereunder will not infringe upon any Intellectual Property Rights of any third party(ies).
- 11.2 Unless otherwise agreed in writing between HKTB and the Supplier, HKTB shall own all Intellectual Property Rights arising out of and pertaining to the Deliverables.
- 11.3 [Applicable to the supply of Services]: To the extent that ownership of any such Intellectual Property Rights in any of the Deliverables remain with the Supplier, the Supplier grants to HKTB a fully paid-up, worldwide, exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables for the purposes of receiving and using the Services and Deliverables.
- 11.4 [Applicable to the supply of Goods]: To the extent that any of the Goods incorporate and/or utilize any Intellectual Property Rights that are owned by the Supplier, the Supplier grants to HKTB a fully paid-up, worldwide, exclusive, royalty-free perpetual and irrevocable licence to use such Intellectual Property Rights in the Goods. Where the Goods incorporate and/or utilize any third party Intellectual Property Rights (other than those owned by the Supplier), the Supplier shall, at the Supplier's own cost, procure that all such consents, licenses authorizations and/or permissions have been obtained from such third parties so as to enable HKTB to enjoy the full and unfettered use of the Goods.

## **12. Safety**

- 12.1 The Goods / Services shall be provided by employees, contractors, and agents of the Supplier in a manner which conforms to the applicable laws and regulations as well as any procedures and instructions intended to prevent accidents, injuries and losses.
- 12.2 All containers for hazardous chemicals and flammable materials shall be labelled accordingly so as to facilitate proper handling and storage.

## **13. Data Privacy / Personal Data**

- 13.1 Where the scope of Services covers personal data management, the Supplier undertakes to comply with all applicable data protection laws, including but not limited to, the Hong Kong Personal Data (Privacy) Ordinance, the European Union General Data Protection Regulation and the China Personal Information Protection Law with regards to the collection and processing of any personal data handled by the Supplier and as passed to the Supplier under the Contract.

## **14. Force Majeure**

- 14.1 Neither Party shall be in breach of the Contract nor be liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure is attributable to a Force Majeure Event.
- 14.2 HKTB shall have the right to suspend or cancel the supply of the Goods / Services or any part thereof in case of a Force Majeure Event and the Supplier shall make the corresponding adjustments to the total Contract price.
- 14.3 If a Party is prevented, hindered or delayed from or in supplying any of the Goods / Services under the Contract due to any Force Majeure event, it shall notify the other Party in writing of the occurrence of such event and the circumstances thereof within two (2) Business Days after the occurrence of such event.
- 14.4 The Party or Parties affected by the Force Majeure Event shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfil its obligations under the Contract.
- 14.5 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than thirty (30) days or an aggregate period of more than sixty (60) days on account of one or more Force Majeure Event(s), the Parties shall negotiate in good faith to attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving written notice to the other, but without prejudice to either Party's rights.

## **15. Assignment**

- 15.1 The Supplier shall not assign any of its interests, rights and obligations under the Contract nor shall it subcontract performance of all or any part of the Contract without the prior written consent of HKTB. All of the provisions of the Terms and Conditions shall be binding upon the Supplier's permitted assignees or subcontractor, as the case may be.

## **16. Confidentiality**

- 16.1 The Supplier undertakes that it shall not at any time during the Contract, and for a period of two (2) years after the termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients of HKTB, except as permitted by Clause 16.2 below.
- 16.2 The Supplier may only disclose HKTB's confidential information:
- 16.2.1 to its employees, officers, representatives, subcontractors, or advisors on a need-to-know basis and for the purposes of performing its obligations under the Contract. It shall ensure that its employees, officers, representatives, subcontractors, or advisors to whom it discloses such confidential information comply with this Clause 16 or
- 16.2.2 as may be required by law, the court or any governmental or regulatory authority; or

- 16.2.3 HKTB has given prior written consent to the disclosure of confidential information.
- 16.3 Neither Party shall use the other Party's confidential information for any purposes other than to perform its obligations under the Contract.
- 16.4 This Clause 16 shall survive the termination or expiry of the Contract.

## **17. Waiver**

- 17.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 17.2 Acceptance of, or payment for, all or part of the Goods / Services supplied according to the Contract shall not be deemed to be a waiver by HKTB of its right to any remedies, including but not limited to, claims for any losses, costs incurred or damages, and to cancel all or any part thereof, due to any delay or failure to abide by the Terms of Conditions, Contract, the Tender Invitation and/or the Tender Submission.

## **18. Amendments and Variation**

- 18.1 Any amendments to the Contract shall only come into effect if agreed by both Parties in writing.

## **19. Governing Law and Jurisdiction**

- 19.1 The Terms and Conditions shall be governed by and construed in accordance with the laws of Hong Kong Special Administrative Region.
- 19.2 The Parties submit to the exclusive jurisdiction of the courts of Hong Kong Special Administrative Region.

## **20. Notices**

- 20.1 Any notice or other communication given to a Party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid post at its registered office or its principal place of business; or sent by fax to its main fax number; or sent by email to the address provided by the Supplier in the Contract.
- 20.2 A notice or other communication shall be deemed to have been received:
- 20.2.1 as may be required by law, the court or any governmental or regulatory authority;
  - 20.2.2 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - 20.2.3 if sent by pre-paid post, on the second Business Day after posting;

20.2.4 if sent by fax or email, at the time of transmission; or

20.2.5 if this time falls outside business hours in the place of receipt, when business hours resume.

In this Clause 20.2, business hours means 9.00am to 5.45pm Monday to Friday on a day that is not a public holiday in the place of receipt.

20.3 This Clause 20.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

## **21. Probity**

21.1 The Supplier shall observe the Prevention of Bribery Ordinance (Cap. 201 of the Laws of Hong Kong Special Administrative Region) (“**PBO**”). The Supplier shall not, and shall procure that its directors, employees, consultants, agents, contractors and other personnel who are in any way involved in the supply of Goods / Services shall not, offer to or solicit or accept from any person any money, gifts or advantages (as defined in the PBO) in relation to the supply of Goods / Services.

21.2 If the Supplier and/or any of its directors, employees, contractors, agents, contractors and other personnel who are in any way involved in the supply of Goods / Services commit any offence under the PBO in relation to the supply of Goods / Services, HKTB shall be entitled to terminate this Contract and shall hold the Supplier liable for any loss or damages HKTB may sustain arising from such termination.

## **22. Entire Agreement and Suppression**

22.1 The Parties acknowledge and accept that the Contract constitutes the entire agreement between them with regard to the Goods / Services and supersedes all prior agreements, discussions, arrangements and undertakings, if any, between the Parties in respect of the Goods / Services.

## **23. Contract Documents**

23.1 HKTB has a right to agree with the Supplier on additional terms and conditions (in form of a written contract) in addition to the Terms and Conditions. In the event of any inconsistencies among documents forming the Contract, the documents shall be construed according to the following order of precedence:

- (a) A contract with additional terms and conditions (if any);
- (b) The Terms and Conditions;
- (c) Tender Invitation;
- (d) Other documents forming the Contract (if any).

23.2 Subject to clause 23.1, the several documents forming the Contract are to be taken as mutually explanatory of one another. However, in case of ambiguities or discrepancies (other than ambiguities or discrepancies within the Supplier’s Tender Submission) the same shall be interpreted by HKTB. HKTB’s interpretation shall be final.

## 24. General

- 24.1 **No prejudice to rights / waiver:** No failure to exercise, or delay in exercising, any right or remedy under the Contract will operate as a release or waiver of such right or remedy or any other right or remedy, nor will any single or partial exercise of any right or remedy under the Contract or provided by law preclude any other or further exercise of it or the exercise of any other right or remedy. A waiver of any breach of the Contract or any right of remedy under the Contract shall not be effective, or implied, unless that waiver is in writing and is signed by the Party against whom that waiver is claimed.
- 24.2 **Severability:** If any term in or provision of the Contract is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, the term or provision shall to that extent be deemed not to form part of the Contract and the enforceability of the remainder of the Contract shall not be affected and shall be enforced to the full extent permitted by law.
- 24.3 **Rights cumulative:** The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies provided by law.
- 24.4 **Survival:** Termination shall not affect any rights and/or obligations accrued before the date of termination or any rights and/or obligations or provisions of the Contract expressed or intended to survive any termination of the Contract.
- 24.5 **Successors and Assigns:** The terms and conditions of the Contract shall be binding upon and shall inure to the benefit of the successors in interest and the assigns of the Parties, except that no assignment, transfer, pledge or mortgage by or through either Party in violation of the provisions of the Contract shall vest any rights in the assignee, transferee, pledgee, mortgagee or in any occupant.
- 24.6 **Further assurances:** Each Party shall execute such further documents and perform and procure such acts and things as may be necessary to give full effect to each Party's obligations under the Contract.
- 24.7 **No partnership:** Nothing in the Contract shall be construed as creating a partnership, association, trust or joint venture between the Parties. Neither Party nor any of its employees, agents, representatives or contractors is deemed an employee, agent, contractor or representative of the other Party. Neither Party has the authority to bind nor to incur any liability on behalf of the other and neither is such authority implied.
- 24.8 **Exclusion of third parties:** Notwithstanding any other provisions of the Contract and save for expressly provided for in the Contract, any person who is not a party thereto shall not have any right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong Special Administrative Region) to enforce any provisions of the Contract. For the avoidable of doubt, this provision does not affect any right or remedy of a third party which exists or is available apart from the said ordinance.

24.9 **Translation:** The Terms and Conditions are written in English. If there are other language versions of the Terms and there are discrepancies between the versions, the English version shall prevail.

**End of Document**